IN THE HIGH COURT OF GUJARAT AT AHMEDABA

SPECIAL CIVIL APPLICATION No. 4040 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARKANT JAMNADAS NATHWANI - Petitioner(s)

Versus

NARINDAR SINGH,COMMISSIONER OF INCOME-TAX - Respondent(s)

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Appearance :

MR SN DIVATIA for Petitioner No(s).: 1.

MR PRANAV G DESAI for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA

and

HON'BLE MS.JUSTICE H.N.DEVANI

Date : 19/07/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 Heard Mr.S.N.Divetia, learned Advocate for the petitioner and Mr.Pranav G.Desai, learned Standing

Counsel for the respondent. In light of the view that the Court proposes to take in the matter, the matter is taken up for final hearing and disposal with consent of the learned Counsel for the respective parties. RULE. Mr.Pranav G.Desai waives service for the respondent.

2 The present petition challenges orders dated 24/6/2004 made by the respondent under Section 119(2)(b) of the Income Tax Act,1961 (the Act) for Assessment Year 1998-99. The case of the petitioner is that it was entitled to refund of Rs.52,696/- for three Assessment Years in question. However, the claim for refund was made belatedly and accordingly the petitioner sought condonation of delay under Section 119(2)(b) of the Act. The respondent has rejected the petition by refusing to condone the delay as well as made certain observations on merits rejecting the claim made by the petitioner.

3 It is submitted by Mr.Divetia that the respondent has condoned the delay in identical circumstances in case of another petitioner viz.,Jamnadas Mulji Nathwani. That the Advocate & Tax Consultant of the petitioner had accordingly written

to the respondent on 23/4/2003 (Annexure-F), but the respondent has failed to take the same into consideration. Mr.Pranav G.Desai, states in light of telephonic instructions that it is a fact that such delay has been condoned in case of another assessee.

4 In these circumstances, without entering into any discussion on merits of the controversy between the parties, it would be sufficient and in the interest of justice if the impugned orders dated 24/6/2004 (Annexure-'A' colly.) are quashed and set aside. The delay in preferring the refund claim is condoned and the respondent is directed to hear the petitioner and decide the merits of the claim in accordance with law.

5 The petition is accordingly allowed to the aforesaid extent. Rule made absolute accordingly. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani, J)

m.m.bhatt